

NH DEPARTMENT OF CORRECTIONS POLICY AND PROCEDURE DIRECTIVE	CHAPTER <u>Enforcement</u> STATEMENT NUMBER <u>5.03</u>
SUBJECT: ARREST WITHOUT WARRANT PROPOSER: <u>Michael McAlister, Acting Director</u> <i>Name/Title</i> <u>Field Services</u> <u>271-5652</u> <i>Office Phone #</i>	EFFECTIVE DATE <u>09/15/06</u> REVIEW DATE <u>06/15/07</u> SUPERCEDES PPD# <u>5.03</u> DATED <u>12/01/05</u>
ISSUING OFFICER: <u>William Wrenn, Commissioner</u>	DIRECTOR'S INITIALS _____ DATE _____ APPENDIX ATTACHED: YES _____ NO _____
REFERENCE NO: See reference section on last page of PPD.	

I. **PURPOSE:**

To provide guidance to staff in executing the arrest of probationers/parolees without a warrant.

II. **STATUTORY AUTHORITY:**

A. RSA 504-A:4 Violation of the Terms of Probation or Parole (attachment 2)

‘I. Any probationer or parolee may be arrested without warrant at any time by any probation or parole officer, or any other officer authorized to arrest upon request of a probation or parole officer, when the probation or parole officer has reason to believe that the probationer or parolee has committed a new criminal offense or is conducting himself in such a way as to be a menace to public safety, or there is probable cause to believe that the probationer or parolee will abscond or commit new criminal offenses if not arrested.’

‘II. When a parolee violates the conditions of his parole but does not meet the criteria for immediate arrest, a probation or parole officer with knowledge of the circumstances of the parole violation shall report the facts surrounding the violation to any member of the parole board who may issue a warrant for the arrest of the parolee.’

B. RSA 651:2,V,(f) (attachment 3)

‘Any offender placed in a home confinement, intensive supervision or special alternative incarceration program who violates the conditions or restrictions of probation shall be subject to immediate arrest by a probation officer or any authorized law enforcement officer and brought before the court for an expeditious hearing pending further disposition.’

III. **APPLICABILITY:**

To all Probation/Parole Officers (PPOs) within the **DIVISION OF FIELD SERVICES ONLY**

IV. **POLICY:**

It is the policy of the Department of Corrections that in order to promote public safety, the warrantless arrest of an offender per RSA 504-A:4 and RSA 651:2,V,(f) may be necessary. The statute clearly identifies the power of arrest as discretionary. The Probation/Parole Office (PPO) shall consider the totality of the circumstances, including but not limited to, the nature of the violation, underlying offense, any prior criminal record and supervision history. PPOs are

reminded that, in the case of a probationer, the officer may request a hearing or a capias/bench warrant. In the case of a parolee, the PPO may request a warrant from a parole board member.

V. PROCEDURES:

- A. A PPO may arrest probationers and parolees without a warrant pursuant to RSA 504-A:4 and RSA 651:2,V(f).
- B. For the purposes of this PPD, the terms "reason to believe" and "probable cause" are synonymous. The term "probable cause" means that based on all facts and circumstances within your knowledge and for which you have reasonably trustworthy information, there is sufficient evidence to cause a reasonable and prudent person to believe that the probationer/parolee has committed, is committing, or attempting to commit, a crime or breach of a condition of probation under RSA 651:2.V.(f). A PPO may arrest offenders under supervision without a warrant pursuant to RSA 504:A when:
 1. The PPO has reason to believe that the probationer/parolee has committed a new criminal offense. The PPO must establish that probable cause exists by conducting an independent inquiry about the facts and circumstances of the criminal act and cannot rely solely on a police officer's assertion that an arrest was made. The PPO can also establish probable cause if he has first hand knowledge of a criminal act or witnesses a criminal act.
 2. They are conducting themselves in such a way as to be a menace to public safety contrary to the conditions of probation/parole. The particular facts must be weighed against the totality of the circumstances.
 3. There is probable cause to believe that the probationer/parolee will abscond or commit new criminal offenses if not arrested. Absconding is defined as eluding supervision or taking concrete steps to flee the jurisdiction.
 4. Arrests under RSA 651:2,V.(f) do not meet the above criteria. The phrase "shall be subject to immediate arrest" does not mean that arrest is mandatory. The PPO shall consider the totality of the circumstances to include the enhanced legal status.
- C. All arrests without a warrant must be reviewed by the Chief Probation/Parole Officer (CPPO) prior to the arrest, when possible, or no later than the next business day after the arrest has occurred. The CPPO shall approve the arrest and shall overturn any arrest if it does not meet the above criteria. The CPPO may order a PPO to arrest an offender if the above criteria are met. The arresting officer shall, within one business day, complete an incident report and shall fax a copy to the Field Services Headquarters office. The report shall contain enough information that the arrest complied with this policy.
 1. Upon the warrantless arrest of a probationer/parolee, a Detention Order will be completed (attachment 1). The Preliminary Notice/Waiver will be read verbatim to the offender, explained and completed. Copies will be provided to the Parole Board or Court, the detaining authority, the PPO and the offender.
 2. Any probationer/parolee who is arrested will be detained at the correctional facility closest to the location where the arrest occurred, or any other suitable confinement facility in reasonable proximity to the location where they were arrested.
 - a. They shall be detained there pending a preliminary hearing.
 - b. No Sheriff or County Correctional Administration shall refuse to accept a probationer/parolee arrested pursuant to RSA 504-A:5.
 3. Following the detention of the offender, the arresting officer must ensure that a violation report is prepared and forwarded to the supervising authority (i.e. Parole Board or Court) no later than the next business day. The CPPO must ensure discretion is used to meet the various standards required by the sentencing court, i.e. telephone notification to the clerk's office, faxed violation report, use of US mail, etc.
 - a. A Parole Violation report will be accompanied by a warrant request to a Parole Board member the next business day. A copy of the Detention Order shall be attached to the report.

- b. A Probation Violation report will be forwarded to the Court with the Detention Order. The offender is not entitled to bail by the administrative hearing process. (It is noted that currently some courts may schedule a bail hearing and grant bail).
 - c. Effective 1/1/06, except as provided by RSA 597:1-d, a person charged with a probation violation shall be entitled to a bail hearing (attachment 4).
- 5. The United States Supreme Court decisions in Morrissey v. Brewer, 408 US 471 (1972) for Parolees and Gagnon v. Scarpelli, 411 US 778 (1973) for Probationers must be followed as they apply to each. As such, upon arrest and detention, the Hearings Officer must hold a preliminary hearing.
 - a. To determine whether there is probable cause to believe that the arrested probationer/parolee has committed acts that would constitute a Violation of Parole/Probation conditions or acts pursuant to V(1)-(3) above;
 - b. The "inquiry [must] be conducted at or reasonably near the place of "arrest and held within 72 hours from the time of arrest, excluding Saturdays, Sundays and holidays;
 - c. Determination of probable cause shall be made by "someone not directly involved in the case", and "other than the one who has made or participated in the arrest or has recommended" the arrest. In the case of probationers/parolees, it means a neutral and detached hearings officer. Examples include other Probation/Parole Officers with the office or from another District Office or other disinterested party.
 - d. The probationer/parolee shall be given written notice at least three days in advance of the preliminary hearing with the date and time of the hearing and the specific violation(s) charged. The offender is also advised in writing of the right to:
 - 1. Assistance to adequately present their cases, have counsel appointed. In the case of indigent persons who request assistance to adequately present their case, counsel will be appointed for them.
 - 2. Present evidence and favorable witnesses
 - 3. Disclosure of evidence
 - 4. Confront adverse witnesses, unless the witnesses would be subjected to a risk of harm
 - 5. Request postponement of the hearing for good cause
 - 6. The hearing officer shall prepare a report that outlines the basis for the finding of probable cause. The report will be provided to the supervising authority, the PPO and the offender within 21 calendar days of the hearing.
 - 7. Continuances on hearings must be made in writing to the Hearings Officer specifying the reasons for the request.
- D. Academy Probationers
 - 1. Academy probationers are subject to immediate arrest for a violation of conditions or restrictions of probation by any PPO or authorized law enforcement officer as provided by RSA 651:2V(f).
 - 2. Academy probationers who are arrested without a warrant shall be lodged at the nearest correctional facility under a detention order.
 - 3. The sentencing Court, Prosecutor, and Defense Attorney of record are notified of the arrest no later than the next business day and shall be provided the appropriate information and documents necessary for the Court to conduct a hearing on the allegation.
 - 4. Probationers in the Academy program have waived their right to a preliminary hearing. The provisions of Gagnon v. Scarpelli do not apply to offenders in the Academy programs.

REFERENCES:

Standards for the Administration of Correctional Agencies
Second Edition Standards

Standards for Adult Correctional Institutions
Fourth Edition Standards

Standards for Adult Community Residential Services
Fourth Edition Standards

Standards for Adult Probation and Parole Field Services
Third Edition Standards

3-3160 thru 3162; 3-3164 thru 3166

Other:

McALISTER/pf

Attachments

DETENTION ORDER

Probationer/Parolee's Name	DOB and Identifying Data
----------------------------	--------------------------

 Date

 Probation/Parole Officer

Probationer/Parolee

pending a preliminary hearing.

DATE: _____

PPD 5.03

TITLE LI

COURTS

CHAPTER 504-A

PROBATIONERS AND PAROLEES

Section 504-A:5

504-A:5 Detention of Violators. – Any probationer or parolee who is arrested under the authority of RSA 504-A:4 or RSA 651-A:25 shall be detained at the county jail closest to the location where he was arrested

or any other suitable confinement facility in reasonable proximity to the location where he was arrested. Such probationer or parolee shall be detained there pending a preliminary hearing or, if supervised pursuant to RSA 651-A:25, shall be detained pending a hearing, including a final revocation hearing, or transfer to the sending state. No sheriff or county correctional administrator shall refuse to accept a probationer or parolee committed to his facility for detention by or under the authority of a probation or parole officer.

Source. 1986, 156:1. 1993, 112:1, eff. July 3, 1993.

TITLE LI
COURTS
CHAPTER 504-A
PROBATIONERS AND PAROLEES
Section 504-A:6

504-A:6 Preliminary Hearing. – The facts and circumstances surrounding the arrest and detention of any probationer or parolee shall be expeditiously reviewed at a preliminary hearing meeting the due process requirements of federal law.

Source. 1986, 156:1, eff. May 28, 1986.

CHAPTER 230**HB 252 – FINAL VERSION**

09Mar2005... 0450h

06/02/05 1591s

2005 SESSION

05-0416

09/04

HOUSE BILL 252

AN ACT requiring bail hearings for persons arrested for probation violations.

SPONSORS: Rep. Pantelakos, Rock 16

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill requires bail hearings for persons arrested for probation violations.

Explanation: Matter added to current law appears in ***bold italics***.Matter removed from current law appears [~~in brackets and struck through~~].

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

09Mar2005... 0450h

06/02/05 1591s

05-0416

09/04

STATE OF NEW HAMPSHIRE*In the Year of Our Lord Two Thousand Five*

AN ACT requiring bail hearings for persons arrested for probation violations.

Be it Enacted by the Senate and House of Representatives in General Court convened:

230:1 New Paragraph; Release of Person Detained for Probation Violation. Amend RSA 597:2 by inserting after paragraph I the following new paragraph:

I-a. Except as provided in RSA 597:1-d, a person charged with a probation violation shall be entitled to a bail hearing. The court shall issue an order that, pending a probation violation hearing, the person be:

Attachment 4

Page 2 of 2

(a) Released on his or her personal recognizance or upon execution of an unsecured appearance bond, pursuant to the provisions of paragraph II;

(b) Released on a condition or combination of conditions pursuant to the provisions of paragraph III; or

(c) Detained.

230:2 New Section; Bail and Recognizances for Person Detained for Probation Violation. Amend RSA 597 by inserting after section 5 the following new section:

597:5-a When Requirable; Bail and Recognizances for Person Detained for Probation Violation. Upon motion duly made, a court shall schedule a bail hearing. Every court may, when a person is accused of an offense or a probation violation in which said court is authorized to receive bail, release said person on personal recognizance or require him or her to recognize, with sureties, to appear at a future time before the court or any other competent tribunal.

230:3 Effective Date. This act shall take effect January 1, 2006.

(Approved: July 11, 2005)

(Effective Date: January 1, 2006)